



U.S. CHAMBER OF COMMERCE

Questions to Guide Analysis of Proposed Overtime Regulation Impact

- How many employees (or what percent of your total employees) do you currently have that are being paid *on a salary basis* (i.e. *income not affected by amount of work/hours*) between \$23,660 (\$455/wk) and \$50,440 (\$970/wk) who are classified as exempt from overtime (under any of the executive, administrative, or professional exemptions)?
 - Regardless of weekly earnings, (i.e. including those who are paid more than the new proposed minimum) what percent of your total employees are classified as exempt from FLSA overtime pay premium?
 - How many employees do you have who are paid on a salary basis for an assigned work week of 40 hours or less who are non-exempt (i.e. eligible for overtime compensation) and are subject to a policy that any hours over 40 per week must be approved in advance?
 - How many of these earn less than \$455/wk? Between \$455/wk and \$970/wk? over 970/wk?
- If the DOL new salary level goes into effect at \$50,440 (\$970/wk), how will you treat these employees who are exempt but now earn less than \$970 per week?
 - Possible options include (for each option estimate the percent of affected employees who will be treated under each option and any level or range of cost you can identify):
 - Increase their salary so that it is above the \$50,440 so that they remain exempt.
 - Reclassify them so that they are no longer exempt and are now on the clock and eligible for overtime (for more than 40 hours a week of work) and continue to have them work as many hours as they do now, i.e. earn overtime at 1.5 times their regular rate of pay.
 - If you choose this option, would you set them a lower wage rate for the first 40 hours calculated to result in about the same total pay as now after paying 1.5times for the usual overtime hours?
 - Reclassify them so that they are eligible for OT but manage their hours very closely to stay at 40 hours or less so that they do not earn OT and are essentially paid the same hourly rate equivalent as they are now, only in an hourly format instead of salary.
 - If you plan to do this, how will you handle the work that will not be done?
 - Hire part time workers to pick up the remaining work.
 - Have exempt employees take care of this work.

- Reduce the productivity of the company so that the work left is not missed or reduce operations – scale back output.
 - Automate some functions now done by labor
 - Shift work off-shore
- Reclassify them so that they are eligible for OT but include the expected OT into their projected income so that they will not earn more than they currently earn.
- The highly compensated employee threshold is also scheduled to increase from \$100,000 to \$122,148. (The HCE exemption requires employees be paid a salary above \$100K and meet only one of the duties under any of the executive, administrative or professional exemptions.) Consider the above questions applying the new HCE threshold.
- Consider any specific benefits that your company provides salaried employees that are different from what you provide hourly employees? How will reclassifying any employees change your costs for these?
- If you are a unionized company, how will reclassifying employees from salaried status to hourly wage earners affect their eligibility for being included in the bargaining unit?

For California Employers

- What impact have you seen from the CA requirement that to be exempt, employers must show an employee is performing their exempt duties more than 50% of the time?
 - Do you bother to perform the time based analysis to determine whether employees can be classified as exempt?
 - California’s salary threshold is considerably less than the new proposed level (\$37,440, scheduled to go to \$41,600 in 2016). How much will that higher threshold matter in terms of whether you will bother with the time based analysis?